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HRB TAX GROUP, INC.
14 and HRB DIGITAL LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17
18 PELENATITA OLOSONI, and DEREK
SNARR, on behalf of themselves, the general
19 public, and those similarly situated,

20 Plaintiffs,

21 v.

22 HRB TAX GROUP, INC. and HRB
DIGITAL LLC,

23 Defendants.
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Case No. 3:19-cv-03610-SK

**DEFENDANTS' AMENDED ANSWER
TO PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Defendants HRB Tax Group, Inc. (“HRB Tax Group”) and HRB Digital LLC (“HRB Digital”) (collectively, “Defendants”) hereby respond to the First Amended Complaint (“FAC”) of Plaintiffs Pelenatita Olosoni and Derek Snarr (collectively, “Plaintiffs”) as follows:

DEFENDANTS’ GENERAL OBJECTION NO. 1

PLAINTIFFS’ ARGUMENTATIVE AND INFLAMMATORY ALLEGATIONS

Defendants file this General Objection to the FAC because the FAC consists primarily of improper, offensive, and argumentative statements couched in inflammatory and salacious language and purported “definitions.” By way of example only, Defendants object to Plaintiffs’ continued use throughout the FAC of the salacious, inflammatory, false, and improper terms, such as “Fake Free Offer,” “True Free Offer,” “Bait-and-Switch Program,” “trick[],” and “hijack.” Defendants categorically deny that any of these offensive terms apply to Defendants or any H&R Block tax preparation services.

The FAC, as so drafted, violates Federal Rules of Civil Procedure 8 and 12(f), which require a pleading to contain a concise statement of the facts supporting a claim that may be fairly admitted or denied, and prohibits impertinent or scandalous allegations meant only to cast one’s opponent in a negative light or as a bad actor. Fed. R. Civ. P. 8(d) (stating “[e]ach allegation must be simple, concise, and direct”); Fed. R. Civ. P. 12(f) (permitting a court to strike any “redundant, immaterial, impertinent, or scandalous matter”); *see Cortina v. Goya Foods Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal. 2015) (defining a “scandalous pleading” under Rule 12(f) as one that “improperly casts a derogatory light on someone, most typically on a party to the action”) (citation omitted); *Beasley v. Lucky Stores, Inc.*, 400 F. Supp. 3d 942, 963 (N.D. Cal. 2019) (granting Rule 12(f) motion to strike “given how far afield the challenged allegations range[d] from the conduct and claims at issue” and because they served “solely to prejudice [the defendant] by painting it as a bad actor”); *Fantasy, Inc. v. Forgerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *reversed on other grounds*, 510 U.S. 517 (1994) (noting that Rule 12(f) permits a court to strike from a pleading matter which “has no essential or important relationship to the claim for relief or the defenses being pleaded” and matter that consists of statements that do not pertain to and are not necessary to the issues in question) (citation omitted); *McHenry v. Renne*,

84 F.3d 1172, 1177-80 (9th Cir. 1996) (affirming dismissal under Rule 8 where pleading was “argumentative, prolix, replete with redundancy, and largely irrelevant”); *Harnden v. California*, 2010 WL 3489379, *1 (N.D. Cal. Sept. 2, 2010) (noting that plaintiff’s initial complaint was dismissed under Rule 8 due to its “highly inflammatory” nature). As drafted, Plaintiffs’ FAC was clearly filed as an effort to grab attention by painting Defendants in a negative light rather than to make factual allegations that can be fairly admitted or denied. Thus, the FAC as drafted is objectionable, in its entirety, and leaves Defendants in the position of being unable to respond in any meaningful way to the highly improper allegations.¹

DEFENDANTS’ GENERAL OBJECTION NO. 2

PLAINTIFFS’ FAILURE TO DISTINGUISH BETWEEN

HRB TAX GROUP AND HRB DIGITAL

Defendants file this General Objection to Plaintiffs’ FAC because the FAC collectively defines “Defendants” to include both of the individually named defendants—HRB Tax Group and HRB Digital. FAC ¶¶ 1, 11. The FAC then generically pleads its allegations against both Defendants, which is improper, particularly in light of the fact that Plaintiffs’ claims sound in fraud, and thus Plaintiffs must specifically plead the alleged fraudulent acts and omissions engaged in by each separate defendant. *See Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (“Rule 9(b) does not allow a complaint to merely lump multiple defendants together but require[s] plaintiffs to differentiate their allegations when suing more than one defendant and inform each defendant separately of the allegations surrounding his alleged participation in the fraud.”) (citation and ellipsis omitted); *Chevalier v. Ray & Joan Kroc Corps. Cmty. Ctr.*, 2012 WL 2088819, at *2 (N.D. Cal. June 8, 2012) (noting that a complaint that fails to “identify which wrongs were committed by which Defendant” is insufficient); *In re iPhone Application Litig.*, 2011 WL 4403963, at *8 (N.D. Cal. Sept. 20, 2011) (noting that when a pleading fails “to allege what role each Defendant played in the alleged harm,” it “makes it exceedingly difficult, if not impossible, for individual Defendants to respond to Plaintiffs’ allegations”). By lumping

¹ Defendants filed a Motion to Strike under Fed. R. Civ. P 12(f) addressed to specific improper allegations in the FAC. *See* Dkt. No. 86.

1 HRB Tax Group and HRB Digital together throughout the FAC, Plaintiffs' FAC makes it
2 difficult to fairly and meaningfully respond to the allegations contained therein, and thus the
3 FAC, as drafted, is objectionable in its entirety.

4 INTRODUCTION

5 1. In addition to their General Objections, and in response to the allegations in
6 Paragraph 1 of the FAC, the allegations include legal conclusions to which no response is
7 required. To the extent that the paragraph contains any allegations requiring a response,
8 Defendants admit that Plaintiffs purport to bring a proposed putative class action alleging
9 violations of the three California statutes cited in Paragraph 1. Except as so expressly admitted,
10 Defendants deny the remaining allegations.

11 2. In addition to their General Objections, and in response to the allegations in
12 Paragraph 2 of the FAC, Defendants admit that they market and sell H&R Block tax preparation
13 services. Except as so expressly admitted, Defendants deny the remaining allegations.

14 3. In addition to their General Objections, and in response to the allegations in
15 Paragraph 3 of the FAC, Defendants admit that the IRS negotiated and entered into the Free File
16 Agreement with a consortium of tax preparation companies. Under this agreement, as amended,
17 member companies provide no-cost tax-preparation services to the IRS Free File program that can
18 be used by up to 70 percent of taxpayers. Except as so expressly admitted, Defendants deny the
19 remaining allegations.

20 4. In addition to their General Objections, and in response to the allegations in
21 Paragraph 4 of the FAC, the allegations include legal conclusions to which no response is
22 required. To the extent that the paragraph contains any allegations requiring a response,
23 Defendants admit that the IRS Free File program delivered by H&R Block is available to eligible
24 taxpayers who access the program. Except as so expressly admitted, Defendants deny the
25 remaining allegations.

26 5. In addition to their General Objections, and in response to the allegations in
27 Paragraph 5 of the FAC, the allegations include legal conclusions to which no response is
28 required. To the extent that the paragraph contains any allegations requiring a response,

1 Defendants admit that HRB Digital offers the H&R Block Free Online service and that its
2 descriptions of the service include (but are not limited to) the word “free.” Except as so expressly
3 admitted, Defendants deny the remaining allegations.

4 6. In addition to their General Objections, and in response to the allegations in
5 Paragraph 6 of the FAC, the allegations include legal conclusions to which no response is
6 required. To the extent that the paragraph contains any allegations requiring a response,
7 Defendants deny the allegations.

8 7. In addition to their General Objections, and in response to the allegations in
9 Paragraph 7 of the FAC, the allegations include legal conclusions to which no response is
10 required. To the extent that the paragraph contains any allegations requiring a response,
11 Defendants deny the allegations.

12 **PARTIES**

13 8. In addition to their General Objections, and in response to the allegations in
14 Paragraph 8 of the FAC, Defendants lack knowledge or information sufficient to form a belief as
15 to the truth of the allegations and on that basis deny them.

16 9. In addition to their General Objections, and in response to the allegations in
17 Paragraph 9 of the FAC, Defendants lack knowledge or information sufficient to form a belief as
18 to the truth of the allegations and on that basis deny them.

19 10. In addition to their General Objections, and in response to the allegations in
20 Paragraph 10 of the FAC, Defendants admit the allegations.

21 11. In addition to their General Objections, and in response to the allegations in
22 Paragraph 11 of the FAC, Defendants admit the allegations.

23 12. In addition to their General Objections, and in response to the allegations in
24 Paragraph 12 of the FAC, Defendants admit that Plaintiffs have improperly pled their FAC by
25 collectively referring to each of the individually named defendants throughout the FAC. Except
26 as so expressly admitted, Defendants deny the remaining allegations.

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13. In addition to their General Objections, and in response to the allegations in Paragraph 13 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

14. In addition to their General Objections, and in response to the allegations in Paragraph 14 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

15. In addition to their General Objections, and in response to the allegations in Paragraph 15 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

16. In addition to their General Objections, and in response to the allegations in Paragraph 16 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

JURISDICTION AND VENUE

17. In addition to their General Objections, and in response to the allegations in Paragraph 17 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants admit that Plaintiffs purport to bring this action pursuant to, among other things, California Business and Professions Code, section 17200, and that Plaintiffs and Defendants are persons within the meaning of California Business and Professions Code, section 17201. Except as so expressly admitted, Defendants deny the remaining allegations.

18. In addition to their General Objections, and in response to the allegations in Paragraph 18 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

1 19. In addition to their General Objections, and in response to the allegations in
2 Paragraph 19 of the FAC, the allegations include legal conclusions to which no response is
3 required. To the extent that the paragraph contains any allegations requiring a response,
4 Defendants admit that H&R Block tax preparation services are marketed in California to citizens
5 of California and that certain taxpayers in California utilize H&R Block tax preparation services.
6 Except as so expressly admitted, Defendants deny the remaining allegations.

7 20. In addition to their General Objections, and in response to the allegations in
8 Paragraph 20 of the FAC, the allegations include legal conclusions to which no response is
9 required. To the extent that the paragraph contains any allegations requiring a response,
10 Defendants admit that they conduct business in California, including the County of San
11 Francisco. Except as so expressly admitted, Defendants deny the remaining allegations.

12 21. In addition to their General Objections, and in response to the allegations in
13 Paragraph 21 of the FAC, to the extent that the allegations purport to summarize, characterize,
14 and/or quote any statements in the referenced Online Services Agreement, the Online Services
15 Agreement speaks for itself and is the best evidence of its content; Defendants refer to the full
16 text of the Online Services Agreement for a complete and accurate recitation of its content and
17 deny each allegation inconsistent therewith. To the extent that the paragraph contains any
18 remaining allegations, Defendants admit that the H&R Block Online Services Agreement is
19 associated with, among other things, H&R Block online tax preparation services and that it
20 contains an Arbitration Agreement. Except as so expressly admitted, Defendants deny the
21 remaining allegations.

22 22. In addition to their General Objections, and in response to the allegations in
23 Paragraph 22 of the FAC, the allegations include legal conclusions to which no response is
24 required. To the extent that the paragraph contains any allegations requiring a response and the
25 allegations purport to summarize, characterize, and/or quote the Online Services Agreement or
26 any legal authority, the Online Services Agreement or legal authority speaks for itself and is the
27 best evidence of its content; Defendants refer to the full text of the Online Services Agreement or
28 legal authority for a complete and accurate recitation of its content and deny each allegation

1 inconsistent therewith. To the extent that the paragraph contains any remaining allegations,
2 Defendants deny the allegations.

3 23. In addition to their General Objections, and in response to the allegations in
4 Paragraph 23 of the FAC, the allegations include legal conclusions to which no response is
5 required. To the extent that the paragraph contains any allegations requiring a response and the
6 allegations purport to summarize, characterize, and/or quote any statements in the referenced
7 Online Services Agreement, the Online Services Agreement speaks for itself and is the best
8 evidence of its content; Defendants refer to the full text of the Online Services Agreement for a
9 complete and accurate recitation of its content and deny each allegation inconsistent therewith.
10 To the extent that the paragraph contains any remaining allegations, Defendants admit that
11 Plaintiff Snarr opted out of the Arbitration Agreement in his Online Services Agreement. Except
12 as so expressly admitted, Defendants deny the remaining allegations.

13 24. In addition to their General Objections, and in response to the allegations in
14 Paragraph 24 of the FAC, the allegations include legal conclusions to which no response is
15 required. To the extent that the paragraph contains any allegations requiring a response,
16 Defendants admit that Plaintiff Snarr filed federal and state tax returns on April 15, 2019, and
17 opted out of the Arbitration Agreement in his Online Services Agreement on May 14, 2019, by
18 filling out the form found at www.hrblock.com/goto/optout. Except as so expressly admitted,
19 Defendants deny the remaining allegations.

20 25. In addition to their General Objections, and in response to the allegations in
21 Paragraph 25 of the FAC, the allegations include legal conclusions to which no response is
22 required. To the extent that the paragraph contains any allegations requiring a response,
23 Defendants admit that the purported declaration by Plaintiff Snarr is attached as an exhibit to the
24 FAC. Except as so expressly admitted, Defendants deny the remaining allegations.

25 26. In addition to their General Objections, and in response to the allegations in
26 Paragraph 26 of the FAC, the allegations include legal conclusions to which no response is
27 required. To the extent that the paragraph contains any allegations requiring a response,
28 Defendants affirmatively state that the appropriate venue for this action is the Western District of

1 Missouri. Defendants further affirmatively state that Plaintiffs are obligated to arbitrate their
2 claims against Defendants pursuant to the terms of their Online Services Agreement and Client
3 Service Agreement. To the extent that the paragraph contains any remaining allegations,
4 Defendants deny the allegations.

5 **SUBSTANTIVE ALLEGATIONS**

6 27. In addition to their General Objections, and in response to the allegations in
7 Paragraph 27 of the FAC, to the extent that the allegations purport to summarize, characterize,
8 and/or quote any statements on or portions of the referenced webpage, the webpage speaks for
9 itself and is the best evidence of its content; Defendants refer to the full text of the referenced
10 webpage for a complete and accurate recitation of its content and deny each allegation
11 inconsistent therewith. To the extent that the paragraph contains any remaining allegations,
12 Defendants deny the allegations.

13 28. In addition to their General Objections, and in response to the allegations in
14 Paragraph 28 of the FAC, Defendants lack knowledge or information sufficient to form a belief as
15 to the truth of the allegations and on that basis deny them. To the extent that the paragraph
16 contains any remaining allegations, Defendants deny the allegations.

17 29. In addition to their General Objections, and in response to the allegations in
18 Paragraph 29 of the FAC, the allegations include legal conclusions to which no response is
19 required. To the extent that the paragraph contains any allegations requiring a response,
20 Defendants admit that HRB Digital offers tax preparation services, including online services.
21 Except as so expressly admitted, Defendants deny the remaining allegations.

22 30. In addition to their General Objections, and in response to the allegations in
23 Paragraph 30 of the FAC, to the extent that the allegations purport to summarize, characterize,
24 and/or quote any legal authority, including the Restructuring and Reform Act of 1998, the legal
25 authority speaks for itself and is the best evidence of its content; Defendants refer to the full text
26 of the legal authority for a complete and accurate recitation of its content and deny each
27 allegation inconsistent therewith. To the extent that the paragraph contains any remaining
28 allegations, Defendants admit that the IRS negotiated and entered into the Free File Agreement

1 with a consortium of tax preparation companies. Under this agreement, as amended, member
2 companies provide no-cost tax-preparation services to the IRS Free File program that can be used
3 by up to 70 percent of taxpayers. Except as so expressly admitted, Defendants deny the
4 remaining allegations.

5 31. In addition to their General Objections, and in response to the allegations in
6 Paragraph 31 of the FAC, to the extent that the allegations purport to summarize, characterize,
7 and/or quote the Free File Agreement or any Memorandum of Understanding related thereto, or
8 corporate documents regarding the formation and purpose of the Free File Alliance, LLC or Free
9 File, Inc., the agreements and documents speak for themselves and are the best evidence of their
10 content; Defendants refer to the full text of the agreements and documents for a complete and
11 accurate recitation of their content and deny each allegation inconsistent therewith. To the extent
12 that the paragraph contains any remaining allegations, Defendants admit that, in 2002, the IRS
13 negotiated and entered into the Free File Agreement with a consortium of tax preparation
14 companies. Under this agreement, as amended, member companies provide no-cost tax-
15 preparation services to the IRS Free File program that can be used by up to 70 percent of
16 taxpayers. The consortium is now known as Free File, Inc., which was formerly known as Free
17 File Alliance, LLC. Except as so expressly admitted, Defendants deny the remaining allegations.

18 32. In addition to their General Objections, and in response to the allegations in
19 Paragraph 32 of the FAC, Defendants admit that HRB Digital is a member of Free File, Inc., and
20 participates in the IRS Free File program. Except as so expressly admitted, Defendants deny the
21 remaining allegations.

22 33. In addition to their General Objections, and in response to the allegations in
23 Paragraph 33 of the FAC, to the extent that the allegations purport to summarize, characterize,
24 and/or quote the provisions or terms of the Free File Agreement or any Memorandum of
25 Understanding related thereto, the agreements and documents speak for themselves and are the
26 best evidence of their content; Defendants refer to the full text of the agreements and documents
27 for a complete and accurate recitation of their content and deny each allegation inconsistent
28 therewith. To the extent that the paragraph contains any remaining allegations, Defendants admit

1 that under the Free File Agreement, as amended, member companies provide no-cost tax
2 preparation services to the IRS Free File program that can be used by up to 70 percent of
3 taxpayers. Defendants admit that the IRS Free File program is available to eligible taxpayers who
4 access the program, and that, in Tax Year 2018, the IRS Free File program was available to
5 taxpayers who accessed the program if they had an adjusted gross income of \$66,000 or less.
6 Except as so expressly admitted, Defendants deny the remaining allegations.

7 34. In addition to their General Objections, and in response to the allegations in
8 Paragraph 34 of the FAC, to the extent that the allegations purport to summarize, characterize,
9 and/or quote any statements in the Eighth Memorandum of Understanding, the Eighth
10 Memorandum of Understanding speaks for itself and is the best evidence of its content;
11 Defendants refer to the full text of the Eighth Memorandum of Understanding (including the 2019
12 Addendum to the Eighth Memorandum of Understanding) for a complete and accurate recitation
13 of its content and deny each allegation inconsistent therewith. Defendants further respond that, to
14 the extent that the allegations assert that the Eighth Memorandum of Understanding applies to the
15 entirety of Plaintiffs' claims, the various Memoranda of Understanding that have been entered
16 between the IRS and Free File, Inc. speak for themselves and are the best evidence of their
17 content; Defendants refer to the full text of the Memoranda of Understanding for a complete and
18 accurate recitation of their content and deny each allegation inconsistent therewith. To the extent
19 that the paragraph contains any remaining allegations, Defendants deny the allegations.

20 35. In addition to their General Objections, and in response to the allegations in
21 Paragraph 35 of the FAC, to the extent that the allegations purport to summarize, characterize,
22 and/or quote the provisions or terms of the Free File Agreement or any Memorandum of
23 Understanding related thereto, the agreement or documents speak for themselves and are the best
24 evidence of their content; Defendants refer to the full text of the agreements or documents for a
25 complete and accurate recitation of their content and deny each allegation inconsistent therewith.
26 To the extent that the paragraph contains any remaining allegations, Defendants deny the
27 allegations.

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1 36. In addition to their General Objections, and in response to the allegations in
2 Paragraph 36 of the FAC, to the extent that the allegations purport to summarize, characterize,
3 and/or quote statements in the Eighth Memorandum of Understanding, the Eighth Memorandum
4 of Understanding speaks for itself and is the best evidence of its content; Defendants refer to the
5 full text of the Eighth Memorandum of Understanding (including the 2019 Addendum to the
6 Eighth Memorandum of Understanding) for a complete and accurate recitation of its content and
7 deny each allegation inconsistent therewith. Defendants further respond that, to the extent that
8 the allegations assert that the Eighth Memorandum of Understanding applies to the entirety of
9 Plaintiffs' claims, the various Memoranda of Understanding that have been entered between the
10 IRS and Free File, Inc. speak for themselves and are the best evidence of their content;
11 Defendants refer to the full text of the Memoranda of Understanding for a complete and accurate
12 recitation of their content and deny each allegation inconsistent therewith. To the extent that the
13 paragraph contains any remaining allegations, Defendants deny the allegations.

14 37. In addition to their General Objections, and in response to the allegations in
15 Paragraph 37 of the FAC, to the extent that the allegations purport to summarize, characterize,
16 and/or quote the provisions or terms of the Free File Agreement or any Memorandum of
17 Understanding related thereto, as well as informational documents and webpages regarding the
18 IRS Free File program, the agreements, documents, and webpages speak for themselves and are
19 the best evidence of their content; Defendants refer to the full text of the agreements, documents,
20 and webpages for a complete and accurate recitation of their content and deny each allegation
21 inconsistent therewith. To the extent that the paragraph contains any remaining allegations,
22 Defendants admit that the Free File Agreement and Memoranda of Understanding permit each
23 member of Free File, Inc. to determine the eligibility criteria for its offer under the IRS Free File
24 program and that, in Tax Year 2018, the IRS Free File program delivered by H&R Block was
25 available to taxpayers who accessed the program if they had an adjusted gross income of \$66,000
26 or less and met one or more of the following criteria: were (i) between the ages of 17 and 51,
27 (ii) active duty military, or (iii) eligible for the Earned Income Tax Credit. Except as so expressly
28 admitted, Defendants deny the remaining allegations.

1 38. In addition to their General Objections, and in response to the allegations in
2 Paragraph 38 of the FAC, the allegations include legal conclusions to which no response is
3 required. To the extent that the paragraph contains any allegations requiring a response and the
4 allegations purport to summarize, characterize, and/or quote any statements in the Eighth
5 Memorandum of Understanding, the Eighth Memorandum of Understanding speaks for itself and
6 is the best evidence of its content; Defendants refer to the full text of the Eighth Memorandum of
7 Understanding (including the 2019 Addendum to the Eighth Memorandum of Understanding) for
8 a complete and accurate recitation of its content and deny each allegation inconsistent therewith.
9 Defendants further respond that, to the extent that the allegations assert that the Eighth
10 Memorandum of Understanding applies to the entirety of Plaintiffs' claims, the various
11 Memoranda of Understanding that have been entered between the IRS and Free File, Inc. speak
12 for themselves and are the best evidence of their content; Defendants refer to the full text of the
13 Memoranda of Understanding for a complete and accurate recitation of their content and deny
14 each allegation inconsistent therewith. To the extent that the paragraph contains any remaining
15 allegations, Defendants deny the allegations.

16 39. In addition to their General Objections, and in response to the allegations in
17 Paragraph 39 of the FAC, the allegations include legal conclusions to which no response is
18 required. To the extent that the paragraph contains any allegations requiring a response and the
19 allegations purport to summarize, characterize, and/or quote any statements in the Eighth
20 Memorandum of Understanding, the Eighth Memorandum of Understanding speaks for itself and
21 is the best evidence of its content; Defendants refer to the full text of the Eighth Memorandum of
22 Understanding (including the 2019 Addendum to the Eighth Memorandum of Understanding) for
23 a complete and accurate recitation of its content and deny each allegation inconsistent therewith.
24 Defendants further respond that, to the extent that the allegations assert that the Eighth
25 Memorandum of Understanding applies to the entirety of Plaintiffs' claims, the various
26 Memoranda of Understanding that have been entered between the IRS and Free File, Inc. speak
27 for themselves and are the best evidence of their content; Defendants refer to the full text of the
28 Memoranda of Understanding for a complete and accurate recitation of their content and deny

1 each allegation inconsistent therewith. To the extent that the paragraph contains any remaining
2 allegations, Defendants deny the allegations.

3 40. In addition to their General Objections, and in response to the allegations in
4 Paragraph 40 of the FAC, the allegations include legal conclusions to which no response is
5 required. To the extent that the paragraph contains any allegations requiring a response and the
6 allegations purport to summarize, characterize, and/or quote any statements in the Eighth
7 Memorandum of Understanding, the Eighth Memorandum of Understanding speaks for itself and
8 is the best evidence of its content; Defendants refer to the full text of the Eighth Memorandum of
9 Understanding (including the 2019 Addendum to the Eighth Memorandum of Understanding) for
10 a complete and accurate recitation of its content and deny each allegation inconsistent therewith.
11 Defendants further respond that, to the extent that the allegations assert that the Eighth
12 Memorandum of Understanding applies to the entirety of Plaintiffs' claims, the various
13 Memoranda of Understanding that have been entered between the IRS and Free File, Inc. speak
14 for themselves and are the best evidence of their content; Defendants refer to the full text of the
15 Memoranda of Understanding for a complete and accurate recitation of their content and deny
16 each allegation inconsistent therewith. To the extent that the paragraph contains any remaining
17 allegations, Defendants deny the allegations.

18 41. In addition to their General Objections, and in response to the allegations in
19 Paragraph 41 of the FAC, the allegations include legal conclusions to which no response is
20 required. To the extent that the paragraph contains any allegations requiring a response,
21 Defendants deny the allegations.

22 42. In addition to their General Objections, and in response to the allegations in
23 Paragraph 42 of the FAC, to the extent that the allegations purport to summarize, characterize,
24 and/or quote any statements in or portions of the referenced webpage, the webpage speaks for
25 itself and is the best evidence of its content; Defendants refer to the full text of the referenced
26 webpage for a complete and accurate recitation of its content and deny each allegation
27 inconsistent therewith. To the extent that the allegations purport to summarize, characterize,
28 and/or quote any statements in the Eighth Memorandum of Understanding, the Eighth

Memorandum of Understanding speaks for itself and is the best evidence of its content; Defendants refer to the full text of the Eighth Memorandum of Understanding (including the 2019 Addendum to the Eighth Memorandum of Understanding) for a complete and accurate recitation of its content and deny each allegation inconsistent therewith. Defendants further respond that, to the extent that the allegations assert that the Eighth Memorandum of Understanding applies to the entirety of Plaintiffs' claims, the various Memoranda of Understanding that have been entered between the IRS and Free File, Inc. speak for themselves and are the best evidence of their content; Defendants refer to the full text of the Memoranda of Understanding for a complete and accurate recitation of their content and deny each allegation inconsistent therewith. To the extent that the paragraph contains any remaining allegations, Defendants admit that the IRS Free File program delivered by H&R Block is available to eligible taxpayers who access the program, and that, in Tax Year 2018, the IRS Free File program delivered by H&R Block was available to taxpayers who accessed the program if they had an adjusted gross income of \$66,000 or less and met one or more of the following criteria: were (i) between the ages of 17 and 51, (ii) active duty military, or (iii) eligible for the Earned Income Tax Credit. Except as so expressly admitted, Defendants deny the remaining allegations.

43. In addition to their General Objections, and in response to the allegations in Paragraph 43 of the FAC, Defendants object to lines 18-20 of the paragraph on the ground that Defendants have filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike lines 18-20 of this paragraph from the FAC. The remaining allegations in the paragraph include legal conclusions to which no response is required. In the event that Defendants' Motion to Strike the lines at issue in this paragraph is denied, and to the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

44. In addition to their General Objections, and in response to the allegations in Paragraph 44 of the FAC, Defendants deny the allegations.

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1 45. In addition to their General Objections, and in response to the allegations in
2 Paragraph 45 of the FAC, Defendants object to the paragraph on the ground that Defendants have
3 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
4 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
5 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

6 46. In addition to their General Objections, and in response to the allegations in
7 Paragraph 46 of the FAC, Defendants admit that the following coding language was used on the
8 hrblock.com/ffa webpage: <meta name="robots" content="noindex, nofollow">. Except as so
9 expressly admitted, Defendants deny the remaining allegations.

10 47. In addition to their General Objections, and in response to the allegations in
11 Paragraph 47 of the FAC, to the extent that the paragraph contains any allegations requiring a
12 response and the allegations purport to summarize, characterize, and/or quote any statements in or
13 portions of the referenced search results, the search results speak for themselves and are the best
14 evidence of their content; Defendants refer to the full text of the referenced search results for a
15 complete and accurate recitation of their content and deny each allegation inconsistent therewith.
16 As to any remaining allegations, Defendants lack knowledge or information sufficient to form a
17 belief as to the truth of the allegations and on that basis deny them.

18 48. In addition to their General Objections, and in response to the allegations in
19 Paragraph 48 of the FAC, the allegations include legal conclusions to which no response is
20 required. To the extent that the paragraph contains any allegations requiring a response,
21 Defendants admit that ProPublica has published articles relating to the IRS Free File program. To
22 the extent that the allegations purport to summarize, characterize, and/or quote any statements in
23 the referenced ProPublica articles, the articles speak for themselves and are the best evidence of
24 their content. Except as so expressly admitted, Defendants deny the remaining allegations in the
25 paragraph and deny the allegations and statements in the referenced ProPublica articles.

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1 49. In addition to their General Objections, and in response to the allegations in
2 Paragraph 49 of the FAC, Defendants admit that that the following coding language is currently
3 used on the hrblock.com/ffa webpage: <meta name="robots" content="noindex, nofollow">.

4 Except as so expressly admitted, Defendants deny the remaining allegations.

5 50. In addition to their General Objections, and in response to the allegations in
6 Paragraph 50 of the FAC, Defendants refer Plaintiffs to their response to Paragraph 49 above.
7 Except as so expressly admitted, Defendants deny the remaining allegations.

8 51. In addition to their General Objections, and in response to the allegations in
9 Paragraph 51 of the FAC, Defendants deny the allegations.

10 52. In addition to their General Objections, and in response to the allegations in
11 Paragraph 52 of the FAC, the allegations include legal conclusions to which no response is
12 required. To the extent that the paragraph contains any allegations requiring a response,
13 Defendants deny the allegations.

14 53. In addition to their General Objections, and in response to the allegations in
15 Paragraph 53 of the FAC, the allegations include legal conclusions to which no response is
16 required. To the extent that the paragraph contains any allegations requiring a response and the
17 allegations purport to summarize, characterize, screen shot, and/or quote any statements in or
18 portions of the referenced webpages, the webpages speak for themselves and are the best
19 evidence of their content; Defendants refer to the full text of the referenced webpages for a
20 complete and accurate recitation of their content and deny each allegation inconsistent therewith.
21 Except as so expressly admitted, Defendants deny the remaining allegations.

22 54. In addition to their General Objections, and in response to the allegations in
23 Paragraph 54 of the FAC, Defendants object to the paragraph on the ground that Defendants have
24 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
25 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
26 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

27 55. In addition to their General Objections, and in response to the allegations in
28 Paragraph 55 of the FAC, Defendants object to the paragraph on the ground that Defendants have

1 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
2 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
3 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

4 56. In addition to their General Objections, and in response to the allegations in
5 Paragraph 56 of the FAC, the allegations include legal conclusions to which no response is
6 required. To the extent that the paragraph contains any allegations requiring a response,
7 Defendants deny the allegations.

8 57. In addition to their General Objections, and in response to the allegations in
9 Paragraph 57 of the FAC, the allegations include legal conclusions to which no response is
10 required. To the extent that the paragraph contains any allegations requiring a response and the
11 allegations purport to summarize, characterize, and/or quote H&R Block online tax preparation
12 services, the services speak for themselves and are the best evidence of their content; Defendants
13 refer to H&R Block online tax preparation services for a complete and accurate recitation of their
14 content and deny each allegation inconsistent therewith. Except as so expressly admitted,
15 Defendants deny the remaining allegations.

16 58. In addition to their General Objections, and in response to the allegations in
17 Paragraph 58 of the FAC, to the extent that the allegations purport to summarize, characterize,
18 and/or quote any statements in or portions of the referenced Google search result screenshot, the
19 Google search result screenshot speaks for itself and is the best evidence of its content;
20 Defendants refer to the full text of the referenced Google search result screenshot for a complete
21 and accurate recitation of its content and deny each allegation inconsistent therewith. Except as
22 so expressly admitted, Defendants deny the remaining allegations.

23 59. In addition to their General Objections, and in response to the allegations in
24 Paragraph 59 of the FAC, the allegations include legal conclusions to which no response is
25 required. To the extent that the paragraph contains any allegations requiring a response,
26 Defendants deny the allegations.

27 60. In addition to their General Objections, and in response to the allegations in
28 Paragraph 60 of the FAC, to the extent that the allegations purport to summarize, characterize,

1 and/or quote statements in or portions of the referenced webpages, the referenced webpages speak
2 for themselves and are the best evidence of their content; Defendants refer to the full text of the
3 referenced webpages for a complete and accurate recitation of their content and deny each
4 allegation inconsistent therewith. To the extent that the paragraph contains any remaining
5 allegations, Defendants deny the allegations.

6 61. In addition to their General Objections, and in response to the allegations in
7 Paragraph 61 of the FAC, Defendants object to the paragraph on the ground that Defendants have
8 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
9 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
10 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

11 62. In addition to their General Objections, and in response to the allegations in
12 Paragraph 62 of the FAC, Defendants object to the paragraph on the ground that Defendants have
13 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
14 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
15 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

16 63. In addition to their General Objections, and in response to the allegations in
17 Paragraph 63 of the FAC, Defendants object to the paragraph on the ground that Defendants have
18 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
19 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
20 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

21 64. In addition to their General Objections, and in response to the allegations in
22 Paragraph 64 of the FAC, Defendants object to the paragraph on the ground that Defendants have
23 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
24 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
25 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

26 65. In addition to their General Objections, and in response to the allegations in
27 Paragraph 65 of the FAC, Defendants object to the paragraph on the ground that Defendants have
28 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the

1 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
2 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

3 66. In addition to their General Objections, and in response to the allegations in
4 Paragraph 66 of the FAC, Defendants object to the paragraph on the ground that Defendants have
5 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
6 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
7 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

8 67. In addition to their General Objections, and in response to the allegations in
9 Paragraph 67 of the FAC, Defendants object to the paragraph on the ground that Defendants have
10 filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph from the
11 FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the extent
12 that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

13 68. In addition to their General Objections, and in response to the allegations in
14 Paragraph 68 of the FAC, the allegations include legal conclusions to which no response is
15 required. To the extent that the paragraph contains any allegations requiring a response and the
16 allegations purport to summarize, characterize, and/or quote any statements in or portions of the
17 referenced search result, the search result speaks for itself and is the best evidence of its content;
18 Defendants refer to the full text of the referenced search result for a complete and accurate
19 recitation of its content and deny each allegation inconsistent therewith. As to any remaining
20 allegations, Defendants lack knowledge or information sufficient to form a belief as to the truth of
21 the allegations and on that basis deny them.

22 69. In addition to their General Objections, and in response to the allegations in
23 Paragraph 69 of the FAC, the allegations include legal conclusions to which no response is
24 required. To the extent that the paragraph contains any allegations requiring a response,
25 Defendants deny the allegations.

26 70. In addition to their General Objections, and in response to the allegations in
27 Paragraph 70 of the FAC, to the extent that the allegations purport to summarize, characterize,
28 and/or quote H&R Block online tax preparation services, the services speak for themselves and

1 are the best evidence of their content; Defendants refer to H&R Block online tax preparation
2 services for a complete and accurate recitation of their content and deny each allegation
3 inconsistent therewith. To the extent that the paragraph contains any remaining allegations,
4 Defendants deny the allegations.

5 71. In addition to their General Objections, and in response to the allegations in
6 Paragraph 71 of the FAC, to the extent that the allegations purport to summarize, characterize,
7 and/or quote H&R Block online tax preparation services, the services speak for themselves and
8 are the best evidence of their content; Defendants refer to H&R Block online tax preparation
9 services for a complete and accurate recitation of their content and deny each allegation
10 inconsistent therewith. To the extent that the paragraph contains any remaining allegations,
11 Defendants admit that taxpayers input information as part of the tax return preparation process.
12 Except as so expressly admitted, Defendants deny the remaining allegations.

13 72. In addition to their General Objections, and in response to the allegations in
14 Paragraph 72 of the FAC, Defendants deny the allegations.

15 73. In addition to their General Objections, and in response to the allegations in
16 Paragraph 73 of the FAC, the allegations include legal conclusions to which no response is
17 required. To the extent that the paragraph contains any allegations requiring a response and the
18 allegations purport to summarize, characterize, and/or quote H&R Block online tax preparation
19 services, the services speak for themselves and are the best evidence of their content; Defendants
20 refer to H&R Block online tax preparation services for a complete and accurate recitation of their
21 content and deny each allegation inconsistent therewith. To the extent that the paragraph contains
22 any remaining allegations, Defendants deny the allegations.

23 74. In addition to their General Objections, and in response to the allegations in
24 Paragraph 74 of the FAC, the allegations include legal conclusions to which no response is
25 required. To the extent that the paragraph contains any allegations requiring a response and the
26 allegations purport to summarize, characterize, and/or quote H&R Block online tax preparation
27 services, the services speak for themselves and are the best evidence of their content; Defendants
28 refer to H&R Block online tax preparation services for a complete and accurate recitation of their

1 content and deny each allegation inconsistent therewith. To the extent that the paragraph contains
2 any remaining allegations, Defendants deny the allegations.

3 75. In addition to their General Objections, and in response to the allegations in
4 Paragraph 75 of the FAC, the allegations include legal conclusions to which no response is
5 required. To the extent that the paragraph contains any allegations requiring a response,
6 Defendants deny the allegations.

7 76. In addition to their General Objections, and in response to the allegations in
8 Paragraph 76 of the FAC, the allegations include legal conclusions to which no response is
9 required. To the extent that the paragraph contains any allegations requiring a response and the
10 allegations purport to summarize, characterize, and/or quote H&R Block online tax preparation
11 services, the services speak for themselves and are the best evidence of their content; Defendants
12 refer to H&R Block online tax preparation services for a complete and accurate recitation of their
13 content and deny each allegation inconsistent therewith. To the extent that the paragraph contains
14 any remaining allegations, Defendants deny the allegations.

15 77. In addition to their General Objections, and in response to the allegations in
16 Paragraph 77 of the FAC, the allegations include legal conclusions to which no response is
17 required. To the extent that the paragraph contains any allegations requiring a response and the
18 allegations purport to summarize, characterize, and/or quote H&R Block online tax preparation
19 services, the services speak for themselves and are the best evidence of their content; Defendants
20 refer to H&R Block online tax preparation services for a complete and accurate recitation of their
21 content and deny each allegation inconsistent therewith. To the extent that the paragraph contains
22 any remaining allegations, Defendants deny the allegations.

23 78. In addition to their General Objections, and in response to the allegations in
24 Paragraph 78 of the FAC, the allegations include legal conclusions to which no response is
25 required. To the extent that the paragraph contains any allegations requiring a response and the
26 allegations purport to summarize, characterize, and/or quote any statements in the cited Eighth
27 Memorandum of Understanding, the Eighth Memorandum of Understanding speaks for itself and
28 is the best evidence of its content; Defendants refer to the full text of the Eighth Memorandum of

1 Understanding (including the 2019 Addendum to the Eighth Memorandum of Understanding) for
2 a complete and accurate recitation of its content and deny each allegation inconsistent therewith.
3 Defendants further respond that, to the extent that the allegations assert that the Eighth
4 Memorandum of Understanding applies to the entirety of Plaintiffs' claims, the various
5 Memoranda of Understanding that have been entered between the IRS and Free File, Inc. speak
6 for themselves and are the best evidence of their content; Defendants refer to the full text of the
7 Memoranda of Understanding for a complete and accurate recitation of their content and deny
8 each allegation inconsistent therewith. To the extent that the paragraph contains any remaining
9 allegations, Defendants deny the allegations.

10 79. In addition to their General Objections, and in response to the allegations in
11 Paragraph 79 of the FAC, the allegations include legal conclusions to which no response is
12 required. To the extent that the paragraph contains any allegations requiring a response,
13 Defendants deny the allegations.

14 80. In addition to their General Objections, and in response to the allegations in
15 Paragraph 80 of the FAC, the allegations include legal conclusions to which no response is
16 required. To the extent that the paragraph contains any allegations requiring a response,
17 Defendants deny the allegations.

18 81. In addition to their General Objections, and in response to the allegations in
19 Paragraph 81 of the FAC, to the extent that the allegations purport to summarize, characterize,
20 and/or quote any statements in or portions of the referenced webpage, the webpage speaks for
21 itself and is the best evidence of its content; Defendants refer to the full text of the referenced
22 webpage for a complete and accurate recitation of its content and deny each allegation
23 inconsistent therewith. To the extent that the paragraph contains any remaining allegations,
24 Defendants deny the allegations.

25 82. In addition to their General Objections, and in response to the allegations in
26 Paragraph 82 of the FAC, to the extent that the allegations refer to the purported state of mind of
27 Plaintiff Olosoni, Defendants lack knowledge or information sufficient to form a belief as to the
28 truth of the allegations and on that basis deny them. To the extent that the paragraph contains any

1 remaining allegations, based on information and belief, Defendants admit that Plaintiff Olosoni's
2 adjusted gross income for 2018 was less than \$66,000. Except as so expressly admitted,
3 Defendants deny the remaining allegations.

4 83. In addition to their General Objections, and in response to the allegations in
5 Paragraph 83 of the FAC, the allegations include legal conclusions to which no response is
6 required. To the extent that the paragraph contains any allegations requiring a response and the
7 allegations refer to the purported state of mind of Plaintiff Olosoni, Defendants lack knowledge or
8 information sufficient to form a belief as to the truth of the allegations and on that basis deny
9 them. To the extent that the paragraph contains any remaining allegations, Defendants admit that
10 Plaintiff Olosoni has used H&R Block online tax preparation services to file taxes since 2014.
11 Except as so expressly admitted, Defendants deny the remaining allegations.

12 84. In addition to their General Objections, and in response to the allegations in
13 Paragraph 84 of the FAC, Defendants lack knowledge or information sufficient to form a belief as
14 to the truth of the allegations and on that basis deny them.

15 85. In addition to their General Objections, and in response to the allegations in
16 Paragraph 85 of the FAC, to the extent that the allegations refer to the purported state of mind of
17 Plaintiff Olosoni, Defendants lack knowledge or information sufficient to form a belief as to the
18 truth of the allegations and on that basis deny them. To the extent that the paragraph contains any
19 remaining allegations, Defendants deny the allegations.

20 86. In addition to their General Objections, and in response to the allegations in
21 Paragraph 86 of the FAC, the allegations include legal conclusions to which no response is
22 required. To the extent that the paragraph contains any allegations requiring a response,
23 Defendants admit that Plaintiff Olosoni logged into her online account in January 2019. Except
24 as so expressly admitted, Defendants deny the remaining allegations.

25 87. In addition to their General Objections, and in response to the allegations in
26 Paragraph 87 of the FAC, the allegations include legal conclusions to which no response is
27 required. To the extent that the paragraph contains any allegations requiring a response and the
28 allegations refer to the purported state of mind of Plaintiff Olosoni, Defendants lack knowledge or

1 information sufficient to form a belief as to the truth of the allegations and on that basis deny
2 them. To the extent that the paragraph contains any remaining allegations, Defendants admit that
3 at various times Plaintiff Olosoni entered information as part of the online tax return preparation
4 process. To the extent that the paragraph contains any remaining allegations, Defendants lack
5 knowledge or information sufficient to form a belief as to the truth of the allegations and on that
6 basis deny them.

7 88. In addition to their General Objections, and in response to the allegations in
8 Paragraph 88 of the FAC, the allegations include legal conclusions to which no response is
9 required. To the extent that the paragraph contains any allegations requiring a response and the
10 allegations refer to the purported state of mind of Plaintiff Olosoni, Defendants lack knowledge or
11 information sufficient to form a belief as to the truth of the allegations and on that basis deny
12 them. To the extent that the paragraph contains any remaining allegations, Defendants admit that
13 H&R Block online tax preparation services provide a taxpayer the option to have any fees
14 deducted from their refund. Except as so expressly admitted, Defendants deny the remaining
15 allegations.

16 89. In addition to their General Objections, and in response to the allegations in
17 Paragraph 89 of the FAC, to the extent that the allegations refer to the purported state of mind of
18 Plaintiff Olosoni, Defendants lack knowledge or information sufficient to form a belief as to the
19 truth of the allegations and on that basis deny them. To the extent that the paragraph contains any
20 remaining allegations, Defendants deny the allegations.

21 90. In addition to their General Objections, and in response to the allegations in
22 Paragraph 90 of the FAC, the allegations include legal conclusions to which no response is
23 required. To the extent that the paragraph contains any allegations requiring a response and the
24 allegations refer to the purported state of mind of Plaintiff Olosoni, Defendants lack knowledge or
25 information sufficient to form a belief as to the truth of the allegations and on that basis deny
26 them. To the extent that the paragraph contains any remaining allegations, Defendants deny the
27 allegations and deny that Plaintiff Olosoni is entitled to any relief whatsoever.

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1 91. In addition to their General Objections, and in response to the allegations in
2 Paragraph 91 of the FAC, to the extent that the allegations refer to the purported state of mind of
3 Plaintiff Snarr, Defendants lack knowledge or information sufficient to form a belief as to the
4 truth of the allegations and on that basis deny them. To the extent that the paragraph contains any
5 remaining allegations, based on information and belief, Defendants admit that Plaintiff Snarr's
6 adjusted gross income for 2018 was less than \$66,000. Except as so expressly admitted,
7 Defendants deny the remaining allegations.

8 92. In addition to their General Objections, and in response to the allegations in
9 Paragraph 92 of the FAC, to the extent that the paragraph contains any allegations requiring a
10 response and the allegations purport to summarize, characterize, and/or quote any statements in or
11 portions of the referenced search result, the search result speaks for itself and is the best evidence
12 of its content; Defendants refer to the full text of the referenced search result for a complete and
13 accurate recitation of its content and deny each allegation inconsistent therewith. As to any
14 remaining allegations, Defendants lack knowledge or information sufficient to form a belief as to
15 the truth of the allegations and on that basis deny them.

16 93. In addition to their General Objections, and in response to the allegations in
17 Paragraph 93 of the FAC, the allegations include legal conclusions to which no response is
18 required. To the extent that the paragraph contains any allegations requiring a response,
19 Defendants deny the allegations.

20 94. In addition to their General Objections, and in response to the allegations in
21 Paragraph 94 of the FAC, to the extent that the allegations refer to the purported state of mind of
22 Plaintiff Snarr, Defendants lack knowledge or information sufficient to form a belief as to the
23 truth of the allegations and on that basis deny them. To the extent that the paragraph contains any
24 remaining allegations, Defendants deny the allegations.

25 95. In addition to their General Objections, and in response to the allegations in
26 Paragraph 95 of the FAC, the allegations include legal conclusions to which no response is
27 required. To the extent that the paragraph contains any allegations requiring a response and the
28 allegations refer to the purported state of mind of Plaintiff Snarr, Defendants lack knowledge or

1 information sufficient to form a belief as to the truth of the allegations and on that basis deny
2 them. To the extent that the paragraph contains any remaining allegations, Defendants deny the
3 allegations.

4 96. In addition to their General Objections, and in response to the allegations in
5 Paragraph 96 of the FAC, the allegations include legal conclusions to which no response is
6 required. To the extent that the paragraph contains any allegations requiring a response and the
7 allegations refer to the purported state of mind of Plaintiff Snarr, Defendants lack knowledge or
8 information sufficient to form a belief as to the truth of the allegations and on that basis deny
9 them. To the extent that the paragraph contains any remaining allegations, Defendants deny the
10 allegations.

11 97. In addition to their General Objections, and in response to the allegations in
12 Paragraph 97 of the FAC, the allegations include legal conclusions to which no response is
13 required. To the extent that the paragraph contains any allegations requiring a response and the
14 allegations refer to the purported state of mind of Plaintiff Snarr, Defendants lack knowledge or
15 information sufficient to form a belief as to the truth of the allegations and on that basis deny
16 them. To the extent that the paragraph contains any remaining allegations, Defendants deny the
17 allegations and deny that Plaintiff Snarr is entitled to any relief whatsoever.

18 98. In addition to their General Objections, and in response to the allegations in
19 Paragraph 98 of the FAC, the allegations include legal conclusions to which no response is
20 required. To the extent that the paragraph contains any allegations requiring a response,
21 Defendants deny the allegations.

22 99. In addition to their General Objections, and in response to the allegations in
23 Paragraph 99 of the FAC, the allegations include legal conclusions to which no response is
24 required. To the extent that the paragraph contains any allegations requiring a response,
25 Defendants deny the allegations.

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1 100. In addition to their General Objections, and in response to the allegations in
2 Paragraph 100 of the FAC, the allegations include legal conclusions to which no response is
3 required. To the extent that the paragraph contains any allegations requiring a response,
4 Defendants deny the allegations.

5 101. In addition to their General Objections, and in response to the allegations in
6 Paragraph 101 of the FAC, Defendants object to the paragraph on the ground that Defendants
7 have filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph
8 from the FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the
9 extent that the paragraph contains any allegations requiring a response, Defendants deny the
10 allegations.

11 102. In addition to their General Objections, and in response to the allegations in
12 Paragraph 102 of the FAC, Defendants object to the paragraph on the ground that Defendants
13 have filed a motion, pursuant to Federal Rule of Civil Procedure 12(f), to strike this paragraph
14 from the FAC. In the event that Defendants' Motion to Strike this paragraph is denied, and to the
15 extent that the paragraph contains any allegations requiring a response, Defendants deny the
16 allegations.

17 103. In addition to their General Objections, and in response to the allegations in
18 Paragraph 103 of the FAC, the allegations include legal conclusions to which no response is
19 required. To the extent that the paragraph contains any allegations requiring a response,
20 Defendants deny the allegations.

21 104. In addition to their General Objections, and in response to the allegations in
22 Paragraph 104 of the FAC, the allegations include legal conclusions to which no response is
23 required. To the extent that the paragraph contains any allegations requiring a response and the
24 allegations purport to summarize, characterize, and/or quote any legal authority, the legal
25 authority speaks for itself and is the best evidence of its content; Defendants refer to the full text
26 of the legal authority for a complete and accurate recitation of its content and deny each
27 allegation inconsistent therewith. To the extent that the paragraph contains any remaining
28 allegations, Defendants admit that Plaintiffs claim they are seeking a public injunction, but

1 Defendants deny engaging in any deceptive and unfair practices and deny that Plaintiffs or any
2 member of the general public are entitled to any relief whatsoever. Except as so expressly
3 admitted, Defendants deny the remaining allegations.

4 105. In addition to their General Objections, and in response to the allegations in
5 Paragraph 105 of the FAC, the allegations include legal conclusions to which no response is
6 required. To the extent that the paragraph contains any allegations requiring a response,
7 Defendants deny that Plaintiffs or any member of the general public are entitled to any relief
8 whatsoever. To the extent that the paragraph contains any remaining allegations, Defendants
9 deny the allegations.

10 106. In addition to their General Objections, and in response to the allegations in
11 Paragraph 106 of the FAC, the allegations include legal conclusions to which no response is
12 required. To the extent that the paragraph contains any allegations requiring a response,
13 Defendants deny that Plaintiffs or any member of the general public are entitled to any relief
14 whatsoever. To the extent that the paragraph contains any remaining allegations, Defendants
15 deny the allegations.

16 107. In addition to their General Objections, and in response to the allegations in
17 Paragraph 107 of the FAC, the allegations include legal conclusions to which no response is
18 required. To the extent that the paragraph contains any allegations requiring a response,
19 Defendants deny that Plaintiffs or any member of the general public are entitled to any relief
20 whatsoever. To the extent that the paragraph contains any remaining allegations, Defendants
21 deny the allegations.

22 108. In addition to their General Objections, and in response to the allegations in
23 Paragraph 108 of the FAC, the allegations include legal conclusions to which no response is
24 required. To the extent that the paragraph contains any allegations requiring a response,
25 Defendants deny that Plaintiffs or any member of the general public are entitled to any relief
26 whatsoever. To the extent that the paragraph contains any remaining allegations, Defendants
27 deny the allegations.

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1 Defendants deny that this action may properly be certified or maintained as a class action under
2 Federal Rule of Civil Procedure 23 or that additional or alternative classes or subclasses would be
3 proper or legally sufficient. To the extent that the paragraph contains any remaining allegations,
4 Defendants deny the allegations.

5 113. In addition to their General Objections, and in response to the allegations in
6 Paragraph 113 of the FAC, the allegations include legal conclusions to which no response is
7 required. To the extent that the paragraph contains any allegations requiring a response,
8 Defendants deny that this action may properly be certified or maintained as a class action under
9 Federal Rule of Civil Procedure 23. To the extent that the paragraph contains any remaining
10 allegations, Defendants deny the allegations.

11 114. In addition to their General Objections, and in response to the allegations in
12 Paragraph 114 of the FAC, the allegations include legal conclusions to which no response is
13 required. To the extent that the paragraph contains any allegations requiring a response,
14 Defendants deny that this action may properly be certified or maintained as a class action under
15 Federal Rule of Civil Procedure 23. To the extent that the paragraph contains any remaining
16 allegations, Defendants deny the allegations.

17 115. In addition to their General Objections, and in response to the allegations in
18 Paragraph 115 of the FAC, the allegations include legal conclusions to which no response is
19 required. To the extent that the paragraph contains any allegations requiring a response,
20 Defendants deny the allegations and deny that this action may properly be certified or maintained
21 as a class action under Federal Rule of Civil Procedure 23. To the extent that the paragraph
22 contains any remaining allegations, Defendants deny the allegations.

23 116. In addition to their General Objections, and in response to the allegations in
24 Paragraph 116 of the FAC, the allegations include legal conclusions to which no response is
25 required. To the extent that the paragraph contains any allegations requiring a response,
26 Defendants deny the allegations and deny that this action may properly be certified or maintained
27 as a class action under Federal Rule of Civil Procedure 23. To the extent that the paragraph
28 contains any remaining allegations, Defendants deny the allegations.

1 117. In addition to their General Objections, and in response to the allegations in
 2 Paragraph 117 of the FAC, the allegations include legal conclusions to which no response is
 3 required. To the extent that the paragraph contains any allegations requiring a response,
 4 Defendants deny the allegations and deny that this action may properly be certified or maintained
 5 as a class action under Federal Rule of Civil Procedure 23. To the extent that the paragraph
 6 contains any remaining allegations, Defendants deny the allegations.

7 118. In addition to their General Objections, and in response to the allegations in
 8 Paragraph 118 of the FAC, the allegations include legal conclusions to which no response is
 9 required. To the extent that the paragraph contains any allegations requiring a response,
 10 Defendants deny the allegations and deny that this action may properly be certified or maintained
 11 as a class action under Federal Rule of Civil Procedure 23. To the extent that the paragraph
 12 contains any remaining allegations, Defendants deny the allegations.

13 119. In addition to their General Objections, and in response to the allegations in
 14 Paragraph 119 of the FAC, the allegations include legal conclusions to which no response is
 15 required. To the extent that the paragraph contains any allegations requiring a response,
 16 Defendants deny the allegations and deny that this action may properly be certified or maintained
 17 as a class action under Federal Rule of Civil Procedure 23. To the extent that the paragraph
 18 contains any remaining allegations, Defendants deny the allegations.

19 **PLAINTIFFS' FIRST CAUSE OF ACTION**

20 **(Violation of the Consumers Legal Remedies Act (the "CLRA"),**

21 **California Civil Code § 1750, *et seq.*, on behalf of Plaintiffs and the Class)**

22 120. In addition to their General Objections, and in response to the allegations in
 23 Paragraph 120 of the FAC, Defendants hereby reassert and incorporate by reference Paragraphs
 24 1-119 above, as though fully set forth herein.

25 121. In addition to their General Objections, and in response to the allegations in
 26 Paragraph 121 of the FAC, the allegations include legal conclusions to which no response is
 27 required. To the extent that the paragraph contains any allegations requiring a response,
 28 Defendants deny the allegations.

1 122. In addition to their General Objections, and in response to the allegations in
2 Paragraph 122 of the FAC, the allegations include legal conclusions to which no response is
3 required. To the extent that the paragraph contains any allegations requiring a response,
4 Defendants deny the allegations.

5 123. In addition to their General Objections, and in response to the allegations in
6 Paragraph 123 of the FAC, the allegations include legal conclusions to which no response is
7 required. To the extent that the paragraph contains any allegations requiring a response,
8 Defendants deny the allegations.

9 124. In addition to their General Objections, and in response to the allegations in
10 Paragraph 124 of the FAC, the allegations include legal conclusions to which no response is
11 required. To the extent that the paragraph contains any allegations requiring a response,
12 Defendants deny the allegations.

13 125. In addition to their General Objections, and in response to the allegations in
14 Paragraph 125 of the FAC, the allegations include legal conclusions to which no response is
15 required. To the extent that the paragraph contains any allegations requiring a response,
16 Defendants deny the allegations.

17 126. In addition to their General Objections, and in response to the allegations in
18 Paragraph 126 of the FAC, the allegations include legal conclusions to which no response is
19 required. To the extent that the paragraph contains any allegations requiring a response,
20 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
21 entitled to any relief whatsoever.

22 127. In addition to their General Objections, and in response to the allegations in
23 Paragraph 127 of the FAC, to the extent that the allegations purport to summarize and/or
24 characterize any statements in or portions of the referenced June 26, 2019 letter, the letter speaks
25 for itself and is the best evidence of its content; Defendants refer to the full text of the letter for a
26 complete and accurate recitation of its content and deny each allegation inconsistent therewith.
27 To the extent that the paragraph contains any remaining allegations, Defendants admit that after
28 commencing this action, Plaintiffs' counsel sent Defendants' counsel a letter dated June 26, 2019,

1 and that Defendants agreed to accept service of the letter by email and waive the statutory mailing
2 requirements. Except as so expressly admitted, Defendants deny the remaining allegations in the
3 paragraph, deny the allegations and statements in the June 26, 2019 letter, and deny that Plaintiffs
4 and the proposed putative class are entitled to any relief whatsoever.

5 128. In addition to their General Objections, and in response to the allegations in
6 Paragraph 128 of the FAC, the allegations include legal conclusions to which no response is
7 required. To the extent that the paragraph contains any allegations requiring a response,
8 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
9 entitled to any relief whatsoever.

10 **PLAINTIFFS' SECOND CAUSE OF ACTION**

11 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"),**
12 **on behalf of Plaintiffs and the Class)**

13 129. In addition to their General Objections, and in response to the allegations in
14 Paragraph 129 of the FAC, Defendants hereby reassert and incorporate by reference Paragraphs
15 1-128 above, as though fully set forth herein.

16 130. In addition to their General Objections, and in response to the allegations in
17 Paragraph 130 of the FAC, the allegations include legal conclusions to which no response is
18 required. To the extent that the paragraph contains any allegations requiring a response,
19 Defendants deny the allegations.

20 131. In addition to their General Objections, and in response to the allegations in
21 Paragraph 131 of the FAC, the allegations include legal conclusions to which no response is
22 required. To the extent that the paragraph contains any allegations requiring a response,
23 Defendants deny the allegations.

24 132. In addition to their General Objections, and in response to the allegations in
25 Paragraph 132 of the FAC, the allegations include legal conclusions to which no response is
26 required. To the extent that the paragraph contains any allegations requiring a response,
27 Defendants deny the allegations.

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1 133. In addition to their General Objections, and in response to the allegations in
2 Paragraph 133 of the FAC, the allegations include legal conclusions to which no response is
3 required. To the extent that the paragraph contains any allegations requiring a response,
4 Defendants deny the allegations.

5 134. In addition to their General Objections, and in response to the allegations in
6 Paragraph 134 of the FAC, the allegations include legal conclusions to which no response is
7 required. To the extent that the paragraph contains any allegations requiring a response,
8 Defendants deny the allegations.

9 135. In addition to their General Objections, and in response to the allegations in
10 Paragraph 135 of the FAC, the allegations include legal conclusions to which no response is
11 required. To the extent that the paragraph contains any allegations requiring a response,
12 Defendants deny the allegations.

13 136. In addition to their General Objections, and in response to the allegations in
14 Paragraph 136 of the FAC, the allegations include legal conclusions to which no response is
15 required. To the extent that the paragraph contains any allegations requiring a response,
16 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
17 entitled to any relief whatsoever.

18 137. In addition to their General Objections, and in response to the allegations in
19 Paragraph 137 of the FAC, the allegations include legal conclusions to which no response is
20 required. To the extent that the paragraph contains any allegations requiring a response,
21 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
22 entitled to any relief whatsoever.

23 138. In addition to their General Objections, and in response to the allegations in
24 Paragraph 138 of the FAC, the allegations include legal conclusions to which no response is
25 required. To the extent that the paragraph contains any allegations requiring a response,
26 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
27 entitled to any relief whatsoever.

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139. In addition to their General Objections, and in response to the allegations in Paragraph 139 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are entitled to any relief whatsoever.

140. In addition to their General Objections, and in response to the allegations in Paragraph 140 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are entitled to any relief whatsoever.

PLAINTIFFS' THIRD CAUSE OF ACTION

(Unlawful, unfair, and fraudulent trade practices in violation of Business and Professions Code § 17200, *et seq.* ("UCL") on behalf of Plaintiffs and the Class)

141. In addition to their General Objections, and in response to the allegations in Paragraph 141 of the FAC, Defendants hereby reassert and incorporate by reference Paragraphs 1-140 above, as though fully set forth herein.

142. In addition to their General Objections, and in response to the allegations in Paragraph 142 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

143. In addition to their General Objections, and in response to the allegations in Paragraph 143 of the FAC, the allegations include legal conclusions to which no response is required. To the extent that the paragraph contains any allegations requiring a response, Defendants deny the allegations.

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1 144. In addition to their General Objections, and in response to the allegations in
2 Paragraph 144 of the FAC, the allegations include legal conclusions to which no response is
3 required. To the extent that the paragraph contains any allegations requiring a response,
4 Defendants deny the allegations and hereby reassert and incorporate by reference Paragraphs 1-7
5 and 41-103 above, as though fully set forth herein.

6 145. In addition to their General Objections, and in response to the allegations in
7 Paragraph 145 of the FAC, the allegations include legal conclusions to which no response is
8 required. To the extent that the paragraph contains any allegations requiring a response,
9 Defendants deny the allegations.

10 146. In addition to their General Objections, and in response to the allegations in
11 Paragraph 146 of the FAC, the allegations include legal conclusions to which no response is
12 required. To the extent that the paragraph contains any allegations requiring a response,
13 Defendants deny the allegations.

14 147. In addition to their General Objections, and in response to the allegations in
15 Paragraph 147 of the FAC, the allegations include legal conclusions to which no response is
16 required. To the extent that the paragraph contains any allegations requiring a response,
17 Defendants deny the allegations.

18 148. In addition to their General Objections, and in response to the allegations in
19 Paragraph 148 of the FAC, the allegations include legal conclusions to which no response is
20 required. To the extent that the paragraph contains any allegations requiring a response,
21 Defendants deny the allegations.

22 149. In addition to their General Objections, and in response to the allegations in
23 Paragraph 149 of the FAC, the allegations include legal conclusions to which no response is
24 required. To the extent that the paragraph contains any allegations requiring a response,
25 Defendants deny the allegations.

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1 150. In addition to their General Objections, and in response to the allegations in
2 Paragraph 150 of the FAC, the allegations include legal conclusions to which no response is
3 required. To the extent that the paragraph contains any allegations requiring a response,
4 Defendants deny the allegations.

5 151. In addition to their General Objections, and in response to the allegations in
6 Paragraph 151 of the FAC, the allegations include legal conclusions to which no response is
7 required. To the extent that the paragraph contains any allegations requiring a response,
8 Defendants deny the allegations.

9 152. In addition to their General Objections, and in response to the allegations in
10 Paragraph 152 of the FAC, the allegations include legal conclusions to which no response is
11 required. To the extent that the paragraph contains any allegations requiring a response,
12 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
13 entitled to any relief whatsoever.

14 153. In addition to their General Objections, and in response to the allegations in
15 Paragraph 153 of the FAC, the allegations include legal conclusions to which no response is
16 required. To the extent that the paragraph contains any allegations requiring a response,
17 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
18 entitled to any relief whatsoever.

19 154. In addition to their General Objections, and in response to the allegations in
20 Paragraph 154 of the FAC, the allegations include legal conclusions to which no response is
21 required. To the extent that the paragraph contains any allegations requiring a response,
22 Defendants deny the allegations and deny that Plaintiffs and the proposed putative class are
23 entitled to any relief whatsoever.

24 **ANSWER TO ALLEGATIONS RE: PLAINTIFFS' REQUEST FOR RELIEF**

25 155. In addition to their General Objections, and in response to the allegations in
26 Plaintiffs' Request for Relief in the FAC, this portion of the FAC contains Plaintiffs' request for
27 relief on each of their claims and does not contain any allegations requiring a response from
28 Defendants. To the extent that any response is required, Defendants deny that Plaintiffs, the

1 proposed putative class, or any member of the general public are entitled to the relief sought in
 2 the FAC and Request for Relief, or any relief whatsoever, and deny each and every allegation in
 3 the Request for Relief.

4 **ANSWER TO ALLEGATIONS RE: PLAINTIFFS' JURY TRIAL DEMAND**

5 156. In addition to their General Objections, and in response to the allegations in
 6 Plaintiffs' Jury Trial Demand in the FAC, this paragraph does not contain any allegations
 7 requiring a response from Defendants. Defendants deny that Plaintiffs are entitled to a jury trial
 8 on all of their causes of action.

9 Defendants deny all other allegations not previously admitted, denied, or otherwise
 10 controverted herein.

11 **AFFIRMATIVE DEFENSES**

12 Without admitting any facts alleged by Plaintiffs, Defendants assert the following separate
 13 and distinct affirmative defenses. The statement of any defense herein does not assume the
 14 burden of proof for any issue, fact, or element of a claim to which the applicable law places the
 15 burden of proof on Plaintiffs. Defendants do not waive any defense and reserve the right to assert
 16 any additional defense that may be available after reasonable discovery.

17 FIRST AFFIRMATIVE DEFENSE

18 (ARBITRATION AND AWARD)

19 157. Plaintiffs' claims are barred because Plaintiffs have agreed to arbitrate their
 20 dispute with Defendants. Plaintiffs' Arbitration Agreements are fully enforceable under the
 21 Federal Arbitration Act, 9 U.S.C. §§ 1-16, which preempts the California state-law rule set forth
 22 in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017).

23 SECOND AFFIRMATIVE DEFENSE

24 (MANDATORY ARBITRATION)

25 158. Plaintiffs' proposed putative class action is barred because the purported putative
 26 class members are bound to arbitrate their dispute with Defendants as required under the terms of
 27 their Arbitration Agreements.

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1 THIRD AFFIRMATIVE DEFENSE

2 (FAILURE TO STATE A CAUSE OF ACTION)

3 159. The FAC, and each purported cause of action alleged therein, fails to state facts
4 sufficient to constitute a cause of action against Defendants.

5 FOURTH AFFIRMATIVE DEFENSE

6 (LACK OF STANDING)

7 160. Plaintiffs and the purported putative class members lack standing to pursue each
8 cause of action pled in the FAC against Defendants, including, but not limited to, the claim for
9 public injunctive relief. Plaintiffs also lack standing to represent the proposed putative class on
10 whose behalf they purport to bring this action.

11 FIFTH AFFIRMATIVE DEFENSE

12 (WAIVER)

13 161. The FAC, and each purported cause of action alleged therein, is barred by the
14 conduct, actions, and inactions of Plaintiffs and the purported putative class members, which
15 amount to and constitute a waiver of any right or rights that Plaintiffs and the purported putative
16 class members might have in relation to the matters alleged in the FAC.

17 SIXTH AFFIRMATIVE DEFENSE

18 (ESTOPPEL)

19 162. The FAC, and each purported cause of action alleged therein, is barred by the
20 conduct, actions, and inactions of Plaintiffs and the purported putative class members, which
21 amount to and constitute an estoppel of the causes of action and any relief sought by Plaintiffs
22 and the purported putative class members.

23 SEVENTH AFFIRMATIVE DEFENSE

24 (NO DUTY)

25 163. The FAC, and each purported cause of action alleged therein, is barred because
26 Defendants did not owe Plaintiffs or the purported putative class members any duty with regard to
27 the matters alleged in the FAC. If it should be determined that Defendants did owe Plaintiffs or
28 the purported putative class members a duty, Defendants did not breach their duty.

EIGHTH AFFIRMATIVE DEFENSE

(FAILURE TO INVESTIGATE)

164. Plaintiffs and the purported putative class members failed to investigate matters alleged in the FAC, and either disregarded known information or failed to exercise reasonable care in ascertaining information. In addition, alleged matters about which Plaintiffs complain were adequately disclosed to consumers and/or consumers failed to read the information provided to them that disclosed such matters. For these reasons, the causes of action advanced in the FAC are thus barred, in whole or in part.

NINTH AFFIRMATIVE DEFENSE

(CONSENT)

165. The FAC, and each purported cause of action alleged therein, is barred because Plaintiffs and the purported putative class members consented to the acts forming the basis of Plaintiffs' allegations with actual and/or constructive knowledge of their rights and without undue influence.

TENTH AFFIRMATIVE DEFENSE

(PREEMPTION)

166. The FAC, and each purported cause of action alleged therein, is barred, in whole or in part, because the theories on which those causes of action are based conflict with federal law, regulation, policy, or other authority and therefore are preempted.

ELEVENTH AFFIRMATIVE DEFENSE

(SAFE HARBOR)

167. The FAC, and each purported cause of action alleged therein, is barred, in whole or in part, by the "safe harbor" doctrine because the challenged conduct is either approved, permitted, or compelled by the relevant authority, the authority has considered the challenged conduct and decided that no action shall lie, or the challenged conduct complies with applicable statutes and regulations.

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TWELFTH AFFIRMATIVE DEFENSE

(CONDUCT NOT “UNFAIR”)

168. Defendants’ challenged acts and practices are not “unfair” within the meaning of California Civil Code §§ 1750 *et seq.* and California Business & Professions Code §§ 17200 *et seq.*

THIRTEENTH AFFIRMATIVE DEFENSE

(CONDUCT NOT “FRAUDULENT”)

169. Defendants’ challenged acts and practices are not “fraudulent” within the meaning of California Civil Code §§ 1750 *et seq.*, California Business & Professions Code §§ 17200 *et seq.*, and California Business & Professions Code §§ 17500 *et seq.*

FOURTEENTH AFFIRMATIVE DEFENSE

(CONDUCT NOT “DECEPTIVE”)

170. Defendants’ challenged acts and practices are not “deceptive” within the meaning of California Civil Code §§ 1750 *et seq.*, California Business & Professions Code §§ 17200 *et seq.*, and California Business & Professions Code §§ 17500 *et seq.*

FIFTEENTH AFFIRMATIVE DEFENSE

(NO CAUSATION)

171. The FAC’s request for relief is barred because there is no causal connection between the alleged wrongdoing of Defendants and any harm to Plaintiffs or the purported putative class members, including to the extent that any harm to Plaintiffs or the purported putative class members was proximately caused by the actions of third parties.

SIXTEENTH AFFIRMATIVE DEFENSE

(NO REASONABLE RELIANCE)

172. The FAC, and each purported cause of action alleged therein, is barred to the extent that the allegedly misleading statements or omissions are not statements or omissions that any consumer could or would reasonably rely upon.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(SATISFACTION)

173. The FAC's request for restitution is barred, in whole or in part, because the consumers referenced in the FAC were satisfied with the services provided to them and such consumers thus suffered no injury as a result of the alleged practices on which Plaintiffs' claims are based, to the extent Plaintiffs prove Defendants engaged in such acts or practices.

EIGHTEENTH AFFIRMATIVE DEFENSE

(CESSATION OF THE CHALLENGED CONDUCT)

174. The FAC's request for injunctive relief is barred, in whole or in part, to the extent that Defendants have ceased engaging in the acts or practices identified in the FAC, to the extent Plaintiffs prove Defendants engaged in such acts or practices in the first instance.

NINETEENTH AFFIRMATIVE DEFENSE

(FIRST AMENDMENT)

175. The FAC's request for injunctive relief is barred, in whole or in part, because it seeks to restrain speech protected by the First Amendment of the United States Constitution and Article I, Section 2 of the California Constitution.

TWENTIETH AFFIRMATIVE DEFENSE

(PRIMARY JURISDICTION)

176. The FAC, and each purported cause of action alleged therein, should be stayed pursuant to the doctrine of primary jurisdiction, as each cause of action raises issues that are appropriate and better left to the Internal Revenue Service for initial review.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(LACHES)

177. The FAC's request for injunctive relief is barred, in whole or in part, because of Plaintiffs' and the purported putative class members' unexcused delay in seeking injunctive relief.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(VOLUNTARY PAYMENT DOCTRINE)

178. The FAC, and each purported cause of action alleged therein, is barred, in whole or in part, because all payments at issue were made voluntarily, with knowledge of the material facts.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(UNJUST ENRICHMENT)

179. The FAC, and each purported cause of action alleged therein, is barred, in whole or in part, because Plaintiffs and the purported putative class members would be unjustly enriched if they recovered the amounts sought in the FAC as each and every one of them received value for the services provided by Defendants.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

180. Any recovery on Plaintiffs' FAC, and each purported cause of action alleged therein, is barred in whole or in part by Plaintiffs' and the purported putative class members' failure to mitigate their damages. Consequently, any damages suffered by Plaintiffs and the purported putative class members must be reduced in an amount by which Plaintiffs and the purported putative class members could have mitigated those damages, if any.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(OFFSET)

181. Defendants are entitled to an offset in the amount of any damages, restitution, and settlements recovered by Plaintiffs and the purported putative class members from other parties for the injuries alleged in the FAC should any such damages or restitution be awarded to Plaintiffs and the purported putative class members. Defendants are also entitled to have any damages or restitution that may be awarded to Plaintiffs and the purported putative class members offset by the value of any benefit conferred upon, or payment made to, Plaintiffs and the purported putative class members by Defendants or any collateral source based on the actions alleged in the FAC.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(NO CLASS ACTION)

182. The FAC does not plead facts supporting class certification on any basis, the claims are not suitable for class certification, and Plaintiffs and the purported putative class members cannot establish any of the prerequisites for a class action under Federal Rule of Civil Procedure 23, and, therefore, no class can be certified or maintained in this action.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

183. The FAC's request for relief is barred to the extent that it seeks relief for acts or practices occurring before or outside the relevant Statute of Limitations.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

184. The FAC, and each purported cause of action alleged therein, is barred by the doctrine of unclean hands because Plaintiffs and the putative class members engaged in conduct that proximately caused or contributed to any injuries allegedly suffered.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(NO DAMAGES / NO RESTITUTION)

185. Plaintiffs and all members of the proposed putative class received the full benefit of their purchases and are barred from making claims for restitution as set forth in the FAC.

THIRTIETH AFFIRMATIVE DEFENSE

(IMPROPER REQUEST FOR PUNITIVE DAMAGES)

186. Plaintiffs' FAC does not allege facts sufficient to rise to the level of conduct required to recover punitive damages, and thus all requests for punitive damages are improper.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

(UNCONSTITUTIONALITY OF PUNITIVE DAMAGES)

187. Any award of punitive damages against Defendants in this action would be barred as violating the due process and equal protection provisions of the United States and California Constitutions. Defendants do not admit that Plaintiffs are entitled to recover any punitive damages whatsoever in this action.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(RESERVATION OF OTHER AFFIRMATIVE DEFENSES)

188. Defendants lack sufficient information of all the facts and evidence surrounding the subject incident and are therefore unable to ascertain at this time any additional affirmative defenses which Defendants may have. Therefore, Defendants expressly reserve the right to amend this Answer to assert such other affirmative defenses as may become apparent subsequent to the filing of this Answer, whether in discovery at trial, or otherwise.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that this Court enter the following relief:

1. That judgment be entered in favor of Defendants on all causes of action;
2. That Plaintiffs and the proposed putative class, and each of them, take nothing by way of the FAC;
3. That Defendants be awarded their attorneys' fees, costs, and expenses as permitted by law; and
4. Such other and further relief as the Court may deem just and proper.

Dated: April 28, 2020

Respectfully submitted,

JONES DAY

By: /s/ Darren K. Cottriel
Darren K. Cottriel

Attorneys for Defendants
HRB TAX GROUP, INC.
and HRB DIGITAL LLC